

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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Raymond Gibson, :

Plaintiff, :
Case No. 07-377
vs. : Judge Marbley
Magistrate Judge Abel
The Shelly Company, :

Defendant. :

- - - - -

DEPOSITION OF ROBIN SHARRETT

- - - - -

Taken at Spectrum Reporting LLC
333 East Stewart Avenue
Columbus, OH 43206
May 14, 2008, 11:59 a.m.

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

Teresa Cunningham, Esq.
71 Cavalier Boulevard, Suite 100
Florence, KY 41042

ON BEHALF OF DEFENDANT:

Frantz Ward
127 Public Square
Cleveland, OH 44114
By Brian J. Kelly, Esq.

ALSO PRESENT:

Raymond Gibson

1 Wednesday Morning Session

2 May 14, 2008, 11:59 a.m.

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4 S T I P U L A T I O N S

5 - - - - -

6 It is stipulated by counsel in attendance that
7 the deposition of Robin Sharrett, a witness
8 herein, called by the Plaintiff for
9 cross-examination, may be taken at this time by
10 the notary by notice and agreement that said
11 deposition may be reduced to writing in stenotypy
12 by the notary, whose notes may thereafter be
13 transcribed out of the presence of the witness;
14 that proof of the official character and
15 qualification of the notary is waived.

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I N D E X

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Examination By

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Ms. Cunningham - Cross

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Deposition Exhibits

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17 - Statement by Steve Conklin

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18 - Four statements

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19 - Letter to Gales from Sharrett, 12-18-06

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22 (Exhibits attached to the original transcript.)

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1 ROBIN SHARRETT

2 being first duly sworn, testifies and says as
3 follows:

4 CROSS-EXAMINATION

5 BY MS. CUNNINGHAM:

6 Q. Could you state your name for the
7 record and spell your last name.

8 A. It's Robin M. Sharrett,
9 S-H-A-R-R-E-T-T.

10 Q. My name is Teresa Cunningham, and I
11 represent Raymond Gibson in a case captioned
12 Gibson vs. The Shelly Company. We're here for
13 your deposition. Have you ever been deposed
14 before?

15 A. Yes.

16 Q. I'll be asking you a series of
17 questions. If you don't understand the question,
18 please ask me to repeat it or I'll assume you
19 understand it and you can hear me.

20 A. Fine.

21 Q. You currently work for The Shelly
22 Company?

23 A. Correct.

24 Q. When were you first employed?

1 A. June of '94.

2 Q. In what position were you hired?

3 A. Superintendent.

4 Q. And you were promoted?

5 A. Correct.

6 Q. What year were you promoted?

7 A. I'm not certain of the date, but I'm
8 going to speculate.

9 Q. Ballpark.

10 A. A couple years after that I took on the
11 estimator's role, a few years after --

12 Q. Go ahead.

13 A. A few years after that I took on chief
14 estimator's role. And probably in -- I'm not
15 certain when I took the general manager's
16 position, but it would have been in the past four
17 years, I believe.

18 Q. What are your duties as general
19 manager?

20 A. I'm ultimately responsible for all
21 facets of the division, which would include
22 safety, profits, management, staffing, quality.

23 Q. Are you responsible --

24 A. Pricing.

1 Q. I'm sorry. Go ahead.

2 A. Pricing, customer relations, employee
3 relations to the extent that it involves the
4 Thornville Division, implement the policies, be it
5 EEO or other employee facets.

6 Q. Anything else?

7 A. I'm sure there is, but --

8 Q. Okay. Are you responsible -- let's put
9 it this way: Do you choose individuals who are to
10 be promoted in construction?

11 A. Can you specify what level? At what
12 level?

13 Q. We're only concerned here about into
14 foreman positions.

15 A. I usually would delegate that to the
16 operations managers for the specific product lines
17 that they were in charge of.

18 Q. Could you explain what you mean by
19 that?

20 A. Sure. I have operations managers that
21 would -- or supervisors, managers in specific
22 departments or product lines which would be
23 potentially asphalt, aggregates, construction, and
24 those individual managers would select or bring to

1 me and make the selection of the promotion that
2 they deem appropriate.

3 Q. Okay. First of all, let's talk about
4 the -- what is the geographic region of the
5 Thornville Division from '03 through '05?

6 A. It would have gone as far northeast as
7 Coshocton, as far south as Portsmouth, as far west
8 as Hillsboro, and as far north as Delaware.

9 Q. Okay. So there was no Columbus
10 Division, then?

11 A. Yes. There was.

12 Q. There was?

13 A. Well, I'm sorry. The Columbus was a
14 separate division for aggregates. I was
15 responsible for the construction, and that
16 included the Columbus area geographics.

17 Q. So in construction, then, the
18 Thornville Division was over the Columbus area?

19 A. That is correct.

20 Q. Okay. So for all intents and purposes,
21 what we're here for today, the geographic area
22 included the Columbus region from '03 to '05?

23 A. Fine, yes.

24 Q. Okay. Okay. Now, during the time

1 period -- excuse me. I'm only focusing on between
2 '03 and '05. Tell me the procedure for an
3 individual to be promoted into a foreman position.

4 A. We would have -- on a -- weekly,
5 periodically, monthly, we have constant
6 interaction with the operations managers. They
7 have constant interactions with the
8 superintendents, which oversee several foremen.
9 And their communication between them and the
10 foreman would be to evaluate potential needs and
11 capabilities of the people that were foreman that
12 might have some -- that we deem would be
13 successful in taking on the responsibilities of a
14 foreman.

15 Q. So if I'm understanding this correctly,
16 these operation managers, who are they? I haven't
17 seen anything that talks about an operations
18 manager. I've seen foreman. I've seen
19 superintendents. Where does operations manager
20 come in?

21 A. The superintendents would report to the
22 operations manager. And the one for Thornville
23 construction would be Tim Anderson.

24 Q. Okay. Now, who are superintendents?

1 A. They are supervising several foremen.

2 Q. Okay. And then we have foreman below
3 them?

4 A. Correct.

5 Q. So we have foreman, superintendent,
6 operations manager?

7 A. Correct.

8 Q. So if I understand your testimony
9 correctly, you're saying that the foreman, the
10 superintendent, and the operations manager look at
11 these hourly workers, if you will, they observe
12 them?

13 A. Correct.

14 Q. And then if they determine that there's
15 someone who may qualify as a foreman, then they
16 come to you with that name?

17 A. First we would need to identify a -- a
18 need, and then there would be conversation between
19 superintendents, the foremen themselves,
20 operations managers, myself, as to what that need
21 is and then once it's identified who might be the
22 best qualified applicant for that position.

23 Q. Are those positions ever posted?

24 A. They have been, yes.

1 Q. Let's only focus on the time period
2 between '03 and '05.

3 A. Again, there was a transition where we
4 weren't posting them, and I can't be clear as to
5 when we did. I know some of the divisions --
6 Twinsburg and Findlay were probably ahead of the
7 curve and were posting them earlier, they -- but
8 Thornville, I can't definitively say.

9 Q. Were those positions posted after
10 Mr. Gibson left the company's employment?

11 A. They have been.

12 Q. Were they posted prior to Mr. Gibson
13 leaving the company?

14 A. I believe they were, but I can't be
15 certain of that.

16 Q. You're not certain. How were they
17 posted?

18 A. They would have been written and posted
19 at the shop and at the office.

20 Q. What is the shop?

21 A. That's where we repair the equipment or
22 the laydown yard where a lot of the field
23 operations would meet or coordinate.

24 Q. And the office is the Thornville

1 division's central office, if you will?

2 A. Correct.

3 Q. Their business office.

4 Union employees, were they ever at the
5 shop?

6 A. Many times.

7 Q. Many times.

8 On a daily basis does a union employee
9 go to the shop and then out to the job, or do they
10 report directly to the job?

11 A. They're usually throughout assigned to
12 a job, but then there's periodic -- they may need
13 materials, they may need to exchange equipment.
14 So there's a lot of need for them to go to the
15 shop.

16 Q. Okay. But you can't say for certain
17 that every union employee that goes and works at a
18 certain construction site is going to be at the
19 shop?

20 A. No, I can't.

21 Q. No.

22 So it would be fair to say in some
23 instances union employee may never be at the shop?

24 A. True.

1 Q. And there may be some instances where
2 they may be there periodically?

3 A. Correct.

4 Q. Would the foreman on a job select the
5 individual who would go to the shop to pick up
6 these supplies?

7 A. Again, he wouldn't select those
8 persons.

9 Q. Who would just go, then? I don't
10 understand. If you have a foreman, he's in charge
11 of a crew, correct?

12 A. Correct.

13 Q. You have someone on crew and some
14 supply is needed where they would have to go to
15 the shop. Wouldn't the foreman select who would
16 leave the job site?

17 A. Yes.

18 Q. Okay. So in that instance, the foreman
19 would select which crew member would go to the
20 shop to pick up whatever?

21 A. True.

22 Q. Correct?

23 And it is only there at the shop that
24 they would see these posted?

1 A. The only written notification, yes.

2 Q. Okay. Or they could go to the central
3 office?

4 A. Yes.

5 Q. Would it be fair to say that union
6 employees were rarely or if ever at the central
7 office?

8 A. No, I don't think that would be fair to
9 say.

10 Q. Oh, okay. Union members are routinely
11 at central office?

12 A. Not routinely. But you said -- you
13 characterized it as almost never. And I would say
14 that's a mischaracterization.

15 Q. Okay. Well, how often would they be at
16 the central office?

17 A. I'd say several times per year.

18 Q. Per year?

19 A. Either to pick up their check or get
20 training or meet with their foreman, to drop off
21 their car. There's a lot of coordination.

22 Q. Okay. How are checks generally
23 distributed?

24 A. They're mailed or passed out.

1 Q. Passed out at the job site?

2 A. Yes.

3 Q. Or mailed. So as a general rule, a
4 crew member, a union employee, if you will,
5 doesn't drive to central office to pick up their
6 check on a weekly basis?

7 A. You would be surprised. A lot do
8 towards the end of the season, if they need --
9 they want timely or they've been laid off, that
10 would be a typical -- because basically they're
11 not at the job site where you can hand it to them,
12 and a lot do receive their check in hand. So if
13 they've been laid off, they would show up at the
14 office.

15 Q. Oh, that's after they've been laid off?

16 A. For that season.

17 Q. Right. Okay. But during the season
18 we're just going full tilt, beginning of the
19 season, would it be fair to say that crew members,
20 union members, are not at central office on a
21 weekly basis?

22 A. Correct.

23 Q. Would it be fair to say that union
24 members are not at central office on a biweekly

1 basis?

2 A. Correct.

3 Q. Would it be fair to say that union
4 members are not at the central office on a monthly
5 basis?

6 A. Correct.

7 Q. Would it be fair to say that union
8 members are not at the central office on a
9 bimonthly basis?

10 A. Correct.

11 Q. Would it be fair to say that union
12 members are not at central office every three
13 months?

14 A. I'd say there's where you're probably
15 drawing the line.

16 Q. Okay. So they might be there once
17 every three months?

18 A. A few times per season I would expect
19 most do.

20 Q. Okay. Would it be fair to say also
21 that not every union member who is at a job site
22 would be selected by a foreman to go to the shop
23 to pick up whatever supplies?

24 A. Correct.

1 Q. Okay. All right. And also just as I
2 recall your testimony, you were not certain
3 whether or not any foreman positions were posted
4 during -- from 2002 to 2005?

5 A. Correct.

6 Q. Okay. You're not sure when this
7 posting started?

8 A. I've written them before. I can't tell
9 you. It's been several years ago, so I can't tell
10 you before or after Ray, definitively.

11 Q. Okay. All right. So other than what
12 we've talked about with this process of the
13 operations managers, the superintendents and the
14 foremen getting together and talking about who may
15 be a good foreman and then getting with you on a
16 name once a position is identified, is there any
17 other process that an employee can go through to
18 be promoted into a foreman's position?

19 A. He certainly could request to be
20 promoted into a foreman's position.

21 Q. Okay.

22 A. Through their supervisor, through
23 myself, through the operations manager, any number
24 of employees or supervisors.

1 Q. What do you mean by "request"?

2 A. Show some interest either verbally or
3 written.

4 Q. Are union members when they're hired,
5 are they told that they can submit a request for a
6 promotion?

7 A. They're told that they're certainly
8 open to request or communicate in any manner that
9 would be appropriate. If they have a problem, we
10 tell them to contact us, contact Candace Gales.

11 Q. Okay. Focus on the time period '03 to
12 '05.

13 A. Uh-huh.

14 Q. Were union employees told when they
15 were hired that they could submit a request for a
16 promotion?

17 A. No.

18 Q. When union members were hired between
19 '03 and '05 -- and I know that you said you can't
20 really remember when this posting occurred. But
21 if there was a posting, were they told that
22 openings are posted?

23 A. I can say with certainty they are now.
24 I can't say with certainty that they were.

1 Q. Okay. All right. So this request for
2 information would just be a show in interest
3 verbally or in writing with their foreman?

4 A. Usually if they want -- someone wants
5 something they would request it.

6 Q. Okay.

7 A. That's generally how it works.

8 Q. Okay. Any other process than the two
9 we've talked about for an individual to be
10 promoted?

11 A. Well, I think you skimmed over the fact
12 that that conversation -- those folks talk daily
13 as to what the capabilities, they make site visits
14 weekly, probably the operations visits. A manager
15 visits each site at least a couple times a month.
16 He would talk to the foreman, get feedback not
17 only on people but equipment, quality. There
18 would be numerous conversations, and there would
19 be a conversation about how individuals are doing,
20 how are their work performances.

21 Q. Is any of this documented?

22 A. No.

23 Q. Because we've discussed the personnel
24 files with Ms. Gales, and you were here. And as I

1 understand it, Shelly does not keep personnel
2 files on union members, correct?

3 A. I'm not even sure that -- you would
4 have to talk to our legal department. But we are
5 under a collective bargaining agreement, and I'm
6 not sure that we can nor -- I'm not sure that we
7 can even request them to solicit -- solicit them
8 for promotions. I would say that's probably
9 contrary to what the union would find appealing.

10 Q. I'm not asking whether or not Shelly
11 solicits for promotions. I'm talking about
12 opportunities for individuals where they can
13 become aware of promotions and they can take steps
14 to obtain promotions. So you're talking about
15 these operations managers, these superintendents
16 and foremen discussing individuals on the job
17 site, their qualifications, so on and so forth,
18 but yet you're telling me there's no documentation
19 reflecting that?

20 A. It would fill this room. They have
21 conversations hourly, daily. It would be
22 insurmountable to document all their conversation.

23 Q. Well, I'm not asking about every
24 conversation about every subject. I'm simply

1 focusing on promotions here.

2 A. Well, you've identified one. We don't
3 deem it necessary, as we don't deem it necessary
4 to talk about what the quality was yesterday or
5 the schedule was a week ago. It doesn't really
6 enter into why we would want that information.

7 Q. I guess I don't understand your
8 response. You're saying that you're -- you don't
9 think it's important to document union members'
10 interest in promotions?

11 A. I don't think it's important to
12 document what is known.

13 Q. Okay. So just to be fair, then,
14 there's no documentation reflecting these
15 superintendents, operation managers or foremen's
16 discussions about so-and-so, be it whoever, is
17 interested in a promotion?

18 A. Correct.

19 Q. Okay. It's all in their heads?

20 A. Like many other things, yes.

21 Q. Okay. Now, what about the
22 qualifications. Tell me the qualifications for a
23 foreman's position.

24 A. I'd say he needs to demonstrate

1 leadership, a significant propensity for safety
2 and the safety of his workers, selflessness,
3 highly motivated to get to work on time, diligent,
4 articulate, needs to have a significant -- or some
5 math skills, be able to calculate tonnage,
6 understanding the nuances of personalities and
7 what motivates individual crew members to get the
8 most performance from them.

9 Q. Okay. How much do foremen make?

10 A. I guess that would vary by company.

11 Q. By company?

12 A. Like Shelly & Sands -- you said
13 foreman.

14 Q. Oh, no, I'm just focused on the
15 Thornville Division from 2002 to 2005 and then
16 current as far as the wages. Do you remember?

17 A. Would you talk base rate, fringes?

18 Q. Let's talk about it all.

19 A. Okay. Base rates vary by experience.

20 Q. Give me the ranges.

21 A. Oh, 50 -- I would say 48,000 up to
22 65,000.

23 Q. Okay. What about your fringes?

24 A. They would be enrolled in a retirement

1 plan. And I should qualify. These are Thornville
2 foremen who are salaried.

3 Q. That's all I care about.

4 A. Okay. You have --

5 Q. Do you have Thornville foremen who are
6 hourly?

7 A. Union hourly.

8 Q. Okay. We'll talk about that in a
9 minute.

10 A. We don't have them in Thornville. We
11 have them in Findlay and Twinsburg.

12 Q. Okay. I'm not allowed to ask about
13 Findlay and -- and the other division.

14 So let's just focus on Thornville. So
15 they're all salaried, right?

16 A. Correct, managers.

17 Q. Okay. We talked about retirement
18 plans. Is that 401(k)?

19 A. No. It's a profit-sharing plan.

20 Q. Okay.

21 A. Medical benefits.

22 Q. Vacation?

23 A. Vacation.

24 Q. Sick days?

1 A. There is a policy.

2 Q. Okay. What is it?

3 A. Five days or something.

4 Q. Okay. Any other benefits?

5 A. Company vehicle for the period of time
6 they're working.

7 Q. Okay. May -- April through September?

8 A. Lodging --

9 Q. Lodging.

10 A. -- while they're working, travel
11 expenses. I think that pretty much summarizes it.

12 Q. Have you ever calculated the cost of
13 the benefits?

14 A. No. I haven't individually, no.

15 Q. Okay. All right. Now, let's get back
16 to these qualifications. You discussed a laundry
17 list of qualifications for a foreman position.

18 A. Uh-huh.

19 Q. Are those in writing?

20 A. We have a 1945 manual, foremen's manual
21 that the company's culture was bore out of. I've
22 read it; the foremen have read it. I've
23 disseminated it. It pretty much identifies what
24 -- what we're looking for and what is necessary to

1 be a good foreman.

2 Q. This was created in 1945?

3 A. That's correct.

4 Q. Have it ever been updated?

5 A. I've read it. And to be honest with
6 you, the values and the requirements haven't
7 changed from then to now.

8 Q. Okay. So you hand this out to foremen
9 once they're promoted?

10 A. I've handed it out to others.

11 Q. Who else have you handed it out to?

12 A. I've handed it out to all the foremen.

13 Q. Okay. But to all the foremen?

14 A. Yes. Supervision, superintendents. I
15 found it unusual how succinct it was and how
16 applicable it was 50 years ago. So I would say
17 that probably if you were looking for a written
18 characterization of a foreman's position, that's
19 probably what I would give you a copy of.

20 Q. Could you provide a copy of that to
21 your counsel?

22 A. I certainly could.

23 Q. What is this called, the 1945 foreman's
24 manual?

1 A. I think it's called the Shelly Asphalt
2 Foreman's Description or what have you.

3 Q. Does it say, "Foreman's Description"?

4 A. It does say "Foreman's" on there
5 somewhere.

6 Q. Okay. So this is disseminated to
7 individuals once they're promoted. It's not
8 disseminated to individuals who are not promoted?

9 A. It's not -- to be honest with you, I'm
10 not sure it's been disseminated to every foreman.
11 I explained that the culture of what's required as
12 a foreman has bore out of that.

13 Q. Okay. I'm just asking for any
14 documentation. Often companies have notices and
15 post job openings and say, here is the position
16 and here are the qualifications.

17 A. We do that.

18 Q. Now you do that?

19 A. We do.

20 Q. Did you do that between 2002 and 2005?

21 A. Again, I would have to -- I can't be
22 definitive on that. When Ray's tenure was, I
23 can't definitively say that we had a written
24 posting for that position.

1 Q. Okay. This posting that you are
2 posting now, did that have the qualifications of a
3 foreman on it?

4 A. Yes.

5 Q. Okay. It had the opening and the
6 qualifications, and you're not sure when that came
7 out?

8 A. Correct.

9 Q. Okay. Do you think it was 2006 or
10 sooner?

11 A. Not certain.

12 Q. Okay. All right. Okay. So we talked
13 about foreman qualifications and we talked about
14 these individuals who would get together and
15 present, I guess, a name to you, if you will.

16 How are foremen selected for
17 promotions, individuals selected for promotion
18 into foremen positions?

19 A. We would identify a need and then look
20 for internal candidates first and foremost.

21 Q. And this is when you get back to these
22 individuals?

23 A. I don't understand the question.

24 Q. Okay. Well, how do you look for

1 internal candidates?

2 A. We identify them through the -- the
3 process that we discussed.

4 Q. Okay. What's next?

5 A. That's how we identify them.

6 Q. Okay. Who makes the decision?

7 A. Who makes the decision? Usually the
8 operations manager, superintendents and myself are
9 included in a conversation who would -- and then
10 the operations manager. If we saw a need, we
11 would ask that individual that we see as a
12 promising candidate. Through an interview
13 process, get his input, his concerns, his interest
14 level, and then decide if -- if they have to take
15 it any further.

16 Q. Okay. So once you identify a position,
17 then essentially you and the operations managers,
18 the superintendents and the foremen come up with a
19 candidate?

20 A. Are we talking about -- you told me
21 when we started that we were going to go 2003 to
22 2005. That's the policy I'm describing.

23 Q. Right. That's fine.

24 A. Okay. Because it has changed.

1 Q. Oh, I don't care about how it's
2 changed. That's fine.

3 A. Okay.

4 Q. That was the process then?

5 A. Yes.

6 Q. So essentially it would be fair to say
7 that potential candidates, union workers, didn't
8 know about openings but once that management
9 identified an opening and they had a discussion
10 about potential candidates, then management as a
11 group, being the operations managers, the
12 superintendents and the foremen and you would
13 discuss who you wanted to be a candidate and then
14 approach that individual?

15 A. That's part of our job requirements is
16 to identify and staff the division, yes.

17 Q. Okay. From 2003 to 2005, how many
18 minority foremen did the Thornville Division have?

19 A. As a percentage or in raw numbers?

20 Q. No. Raw numbers.

21 A. Three. Two or three.

22 Q. Two or three.

23 How many crews were going? And we can
24 take 2003.

1 A. Can I give a rough estimate?

2 Q. Yeah. You can ball park.

3 A. 18 or 20.

4 Q. 18 or 20 crews?

5 A. Correct.

6 Q. Is there one foreman for every crew?

7 A. Generally, yes.

8 Q. So it would be fair to say two to three
9 minorities and -- that would leave maybe 17 to 18
10 Caucasians?

11 A. I guess as a percentage it would be
12 about 10 percent, yes --

13 Q. Okay.

14 A. -- or more.

15 Q. Who were those minorities?

16 A. Donnie Mayle, Jeff Barnes, and Trevor
17 Small may have been a foreman at one point, but he
18 was later promoted to an area manager.

19 Q. Do you recall when he was promoted?

20 A. I can't, no.

21 Q. Okay. And Mr. Barnes and Mr. Small are
22 American Indian?

23 A. That is correct.

24 Q. Now, is Donnie Mailey -- "Mailey," am I

1 mispronouncing that?

2 A. Mayle.

3 Q. Mayle. When was he promoted?

4 A. He was a foreman when I arrived, so I
5 can't -- I can't describe that.

6 Q. Okay. Prior to -- I forget when you
7 started, '90-something?

8 A. '4.

9 Q. '94.

10 What about Jeff Barnes?

11 A. He was promoted when Trevor Small was
12 promoted to area manager.

13 Q. Do you recall the year?

14 A. If I'm going to give rough numbers,
15 between five and 10 years ago.

16 Q. Okay.

17 A. That's a pretty broad range, but --

18 Q. Okay. How many Caucasians were
19 promoted into foremen positions in 2003?

20 A. I'm not certain of that. I think you
21 have that information.

22 Q. Do you recall?

23 A. I can't.

24 Q. Okay. What about 2004?

1 A. I can't recall. I think we provided
2 that to you.

3 Q. Okay. What about 2005?

4 A. Again, the same response.

5 Q. Okay. You just don't recall?

6 A. I think.

7 MR. KELLY: He may be --

8 A. If you presented me the -- the
9 information that we provided, I probably could
10 recall.

11 Q. Okay. I just want to see what you
12 remember.

13 A. Okay.

14 Q. Were there any Caucasians promoted
15 between 2003 and 2005?

16 A. No.

17 Q. In 2005, which division did Charles
18 Boring work in?

19 A. Thornville.

20 Q. Okay. You just testified that in '05
21 there were not any promotions into foremen
22 positions, correct?

23 A. Can you repeat the question?

24 Q. You just testified that in 2005 there

1 were no promotions into foremen positions?

2 A. No, I did not testify to that.

3 Q. Oh, you didn't? Were there?

4 A. You asked me if there were minority
5 foremans promoted in that year.

6 Q. Oh, I thought --

7 A. And my response was no.

8 Q. Okay. Were there Caucasians promoted?

9 A. I answered your question. And I
10 couldn't recall unless I was provided the data
11 that I submitted already.

12 Q. Okay.

13 MR. KELLY: I think Rob verified the
14 discovery request, so if you have those.

15 MS. CUNNINGHAM: Excuse me.

16 MR. KELLY: I think Rob verified the
17 discovery responses that had that information.

18 MS. CUNNINGHAM: Yeah, I was looking
19 for the EEO documents that talk about it.

20 MR. KELLY: It might be -- well, I'm
21 not going to tell you how to do it.

22 MS. CUNNINGHAM: Well, let's mark this.

23 - - - - -

24 Thereupon, Deposition Exhibit 17 is marked

1 for purposes of identification.

2 - - - - -

3 Q. I'm handing you what's been marked as
4 Plaintiff's Exhibit No. 17.

5 A. Okay.

6 Q. Okay. Have you seen this document
7 before?

8 A. No.

9 Q. Oh, okay. This document states that in
10 2005 and 2006 there were no promotions.

11 MR. KELLY: You should be specific
12 about what the document represents.

13 Q. During the past six months there's no
14 -- there's no data on it. Do you know --

15 A. Well, I think --

16 MR. KELLY: You characterize -- go
17 ahead. You can go ahead.

18 A. I think the letterhead clarifies that
19 it is The Shelly Company Twinsburg Division.

20 Q. Oh, okay. I'm sorry. So it's not
21 Thornville?

22 A. Doesn't -- no, it's not.

23 Q. Okay. All right. I have received a
24 response from your counsel pursuant to the Judge's

1 order. I can make that a part of the exhibit if
2 you would like. Of course, I've written on it.

3 - - - - -

4 Thereupon, Deposition Exhibit 18 is marked
5 for purposes of identification.

6 - - - - -

7 Q. I'm handing you what's been marked
8 Plaintiff's Exhibit 18. Now, this is a document
9 that I received from your counsel in response to
10 the court's order to provide the promotion
11 information with the races from 2002 to 2003.

12 Have you seen this document prior to
13 today?

14 A. Yes.

15 Q. Okay.

16 MR. KELLY: Actually, just for purpose
17 of the record it was '03 to '05.

18 MS. CUNNINGHAM: I'm sorry.

19 MR. KELLY: That's okay.

20 Q. '03 to '05. Is the information in this
21 document correct?

22 A. Yes.

23 Q. Okay. All right. Now, this document
24 has got that Brad Boyer left, but he was -- but

1 Ron Gutridge who replaced him who was Caucasian
2 was not formally promoted into a foreman position
3 until 2006.

4 A. That's correct.

5 Q. Why is that?

6 A. We like to try an interim period.
7 Basically, Brad left the crew in midseason and so
8 we needed someone -- what was most appropriate at
9 that specific case was taking Mr. Gutridge, who
10 was on the crew who had worked with the other five
11 team members, and promote him to the leadership
12 role.

13 But for his own benefit and our
14 benefit, we wanted to go through an interim trial
15 period. And so we maintained that he was still in
16 the union and a craft union employee for --
17 throughout 2005. He wasn't paid salary; he was
18 paid hourly.

19 And then at the end of the season had a
20 meeting with Rod. I know the operations manager
21 didn't. I can't remember if I was in the meeting
22 or not, to discuss how things went, whether he was
23 satisfied with it, and whether we were satisfied
24 with his performance.

1 And then after that conclusion and both
2 parties were interested, we promoted him to a full
3 salary position in '06.

4 Q. Did Mr. Gutridge perform the job duties
5 of a foreman?

6 A. Yes.

7 Q. This document also reflects during 2004
8 Shelly Company promoted Dave Scott from a position
9 of distributor manager, a foreman position, in the
10 Thornville Division. Are you familiar with that
11 promotion?

12 A. Yes.

13 Q. Okay. Can you explain how Mr. Scott
14 came to be chosen?

15 A. He had, I think, seven years of asphalt
16 paving experience. He had been with that crew,
17 working with those people on that crew for several
18 years. And he showed the capabilities that we
19 were interested in as far as leadership and
20 safety, hard-working, and he was the most
21 appropriate candidate that we felt qualified for
22 that position.

23 Q. Was that position posted?

24 A. I don't believe it was.

1 Q. Okay. So you went through this process
2 of talking with the superintendent, the foreman
3 and the -- what was the title here? Operations
4 manager. And the four of you came up with Dave
5 Scott's name?

6 A. I wasn't really involved in that
7 conversation. They came to me and said, hey,
8 we've -- we've had a foreman that quit, which was
9 -- I think his name was Steve DeBoard and they
10 needed somebody. Again, it was midseason. And --
11 but very early. He had been with us for a long
12 time. They said, hey, asked me what I thought. I
13 asked the appropriate questions as to, you know,
14 why they felt he was qualified, and they made the
15 decision to go ahead and promote him.

16 Q. Were any minorities considered for the
17 position Mr. Scott filled?

18 A. I'd have to refer that question to the
19 operations manager and the superintendent.

20 Q. Who's the operations --

21 A. They probably -- I would say they --
22 yes, there was. If the crew members -- they
23 looked at the entire crew and felt that -- that is
24 usually the most appropriate way to promote a

1 craftsperson into a foreman's position. That he
2 knows the people that he's working with, he knows
3 their capabilities. So it's -- for a new foreman
4 coming from craft, that's generally the way we
5 work it is they're taken from that crew who is a
6 very tight-knit group who work from April to
7 November together, generally six people with a
8 couple flaggers that kind of come and go.

9 And there's a lot of personalities, if
10 you will, there's a -- quite a team environment --
11 or mechanics to it. And so if we can, we try to
12 select somebody that's already comfortable with
13 that team. So if there was a minority on that
14 crew, I'd say they were looked at or considered.
15 If there wasn't a minority, then probably just the
16 people in that crew were considered.

17 Q. Okay. Do you have any documentation
18 that reflects who was in each crew?

19 A. No, I don't.

20 Q. Okay. Does the company keep that type
21 of documentation?

22 A. I think payroll records might be able
23 to -- you might be able to ferret it out through
24 payroll records, but I don't know if it's -- at

1 what level of detail.

2 Q. Do you know what crew Dave Scott was on
3 in '04?

4 A. It became his crew.

5 Q. Okay. But I would assume through
6 payroll records you would identify that by the
7 foreman, the previous foreman?

8 A. Uh-huh.

9 Q. And I'm sorry. You gave his name, but
10 I didn't write it down.

11 A. Either Steve or John DeBoard. I'm not
12 certain.

13 Q. How do you spell the last name?

14 A. D-E-B-O-R-B -- D-E-B-O-A-R-D.

15 Q. So it would be Steve DeBoard's crew?

16 A. I believe that's correct.

17 Q. Okay. Could you look for that
18 information and provide it to your counsel?

19 A. Okay. And I'm sure one part of that --
20 that we may have left out was the interest level.
21 You know, Dave Scott would have had to want to be
22 a foreman as well. You know, if they presented
23 him with it, he would have had to concur that,
24 yes, I do want to take on additional

1 responsibility and agree to that.

2 Q. Who was the superintendent over Steve
3 DeBoard's crew?

4 A. Jim Pritchard, who is currently the
5 operations manager for Columbus Division.

6 Q. And who's the -- who was the operations
7 manager of Steve DeBoard's crew?

8 A. Tim Anderson. There's only one for
9 Thornville construction.

10 Q. Oh, I see.

11 What were Dave Scott's qualifications?

12 A. Because I didn't make the selection, I
13 can't -- I can just convey what was conveyed to
14 me.

15 Q. Okay.

16 A. Which was hard-working, well-liked by
17 the crew, got along well with others, knew the
18 work very well, had been in the asphalt paving
19 portion, had been the -- I would say the lead man.
20 Usually there's a key person that, you know --
21 that shows a lot of initiative to -- and I would
22 say that's how he was characterized.

23 Q. Okay. What were Mr. Gutridge's
24 qualifications?

1 A. Very similar to Dave Scott's.

2 Q. Okay. And I may have asked you this
3 before, but it was the same situation where you
4 got together with these individuals and you --
5 they came up with Rod Gutridge's name?

6 A. Correct.

7 Q. And you said, okay?

8 A. I didn't know Rod Gutridge, you know,
9 firsthand. I did not know Dave Scott firsthand.

10 Q. Okay. On Mr. Boyer's crew in '05, were
11 there any minorities?

12 A. I don't know that. I would -- I don't
13 know.

14 - - - - -

15 Thereupon, Plaintiff's Exhibit 19 is
16 marked for purposes of identification.

17 - - - - -

18 Q. I'm handing you what's been marked as
19 Plaintiff's Exhibit No. 19. This is a letter from
20 you to Ms. Gales dated December the 18th of '06.
21 Do recall this letter?

22 A. Yes, I do.

23 Q. Now, it states in the middle of the
24 letter that -- it's got your name and that you're

1 responsible for hiring or discharge of all
2 nonunion employees, also responsible for promotion
3 of both union and no union employees.

4 So is this letter incorrect in that you
5 do not make the final decision?

6 A. I do make the final decision.

7 Q. Okay. Okay. So they just present the
8 name to you and then --

9 A. I delegate authority and concur, or
10 once a decision -- you know, I ask for
11 recommendations.

12 Q. Okay. But you make the final decision?

13 A. I give it the rubber stamp yes or no.

14 Q. Okay. All right. How do you identify
15 -- this letter says these conveyances are verbal
16 and done when suitable positions become available.

17 How do you identify when a position
18 becomes available?

19 A. Workload would dictate or turnover.

20 Q. Okay. So tell me what happens in the
21 beginning of a season. February, March, you're
22 gearing up. Tell me how you select foremans.

23 A. Well, the same -- we like to -- we
24 don't make these foremen positions short term. We

1 try to retain those positions year to year. And
2 so basically if they've been a foreman in the
3 past, they are salaried positions, so they're
4 still working for us come March.

5 Q. Okay. So you consider them year-round
6 employees, if you will?

7 A. Yes. They may take a short-term
8 layoff, some. Some are required in the shop to
9 help out with winter maintenance, depending on
10 their location, where they live.

11 Q. So if someone is a foreman, then
12 they're called back or either they're a continuous
13 employee?

14 A. Correct.

15 Q. So it would depend on the number of
16 jobs that you get?

17 A. Yes. I mean, we can -- we generally
18 keep them -- you know, even if we don't have maybe
19 a full crew for them to work, they may go out and
20 do something that's maybe not your standard
21 asphalt paving all day every day.

22 Q. Uh-huh. How many crews did you have in
23 2003?

24 A. I think -- my best guess was -- as it

1 was before, somewhere between 18 and 20. I don't
2 know.

3 Q. Would it help you if you reviewed
4 Exhibit 13 that talked about the contracts?

5 A. Sure. I think -- I feel with certainty
6 somewhere in the 18 to 20 number that I gave
7 before is accurate.

8 Q. Okay. And what about '04?

9 A. They didn't change more than a crew or
10 two.

11 Q. Okay. And then '05?

12 A. Again, there's some --

13 Q. Okay.

14 A. -- variability. But there's some
15 variation.

16 Q. Okay.

17 A. And some of those foremen may have been
18 foreman with seven employees one year and they may
19 have had three or two employees the following
20 year.

21 Q. Okay. Do you know Mr. Gibson?

22 A. I do.

23 Q. When did you first meet Mr. Gibson?

24 A. I think it's in my earlier deposition.

1 It's been a long time ago, and I can't recall the
2 actual date.

3 Q. Okay. Did he ever express an interest
4 in becoming a foreman?

5 A. When he was rehired due to the
6 arbitrator's decision. Only after he had been
7 disciplined and dismissed, then he came back after
8 the arbitrator's decision and sent in a request.

9 Q. I'm sorry. He what? Settled a
10 request?

11 A. Sent.

12 Q. A request?

13 A. Yes.

14 Q. Okay. But you're talking about his
15 discipline and termination, but the arbitration --
16 arbitrator essentially overruled the termination,
17 correct, and ordered that Shelly reinstate him and
18 pay him back pay?

19 A. They didn't find enough grounds for
20 termination. They did find him guilty of a
21 serious safety violation.

22 Q. A serious safety violation?

23 A. I think -- yes.

24 Q. The arbitrator's decision reflected

1 that there was an incident report for this alleged
2 serious violation in '03. I've not been provided
3 a copy of that. Do you have a copy of that?

4 A. Are you -- you're referring to me?

5 Q. Yeah. Or the Shelly Company?

6 A. It's in the court records for the first
7 case.

8 Q. I've not been provided a copy of it.
9 Could you get a copy of that and give it to your
10 counsel?

11 A. I certainly could.

12 MR. KELLY: Whatever documents were
13 part of that were previously provided to you, to
14 the extent we have those documents so --

15 MS. CUNNINGHAM: All I know is the only
16 time I have -- I have not seen any incident
17 reports regarding Mr. Gibson. And the
18 arbitrator's decision reflects or discusses this
19 2003 incident report and I've never gotten a copy
20 of it. And I've -- and I've tried to get
21 everything I can. But anyway.

22 Q. Okay. So it's your testimony that he
23 did express an interest?

24 A. Yes.

1 Q. Was there a position open at that time?

2 A. Not to my knowledge, no.

3 Q. Okay. Did Mr. Gibson express his
4 interest to you?

5 A. He wrote me a letter.

6 Q. Okay. And did you get back with him?

7 A. I wrote him a letter.

8 Q. Okay. What did you tell him?

9 A. I told him -- I don't think he
10 specifically said that he wanted a foreman's job.
11 He inquired as to what he would need to do in
12 order to -- what the requirements are or what
13 steps would be -- it was more generic than just
14 him saying "I would like to be a foreman" is my
15 recollection.

16 Q. Okay.

17 A. And my response was similar to this one
18 that I wrote on Exhibit 19, that direct
19 supervisors are responsible for assessing the work
20 performance and make recommendations. And
21 basically, you know, show some interest and do a
22 great job and you've got a high likelihood of
23 promotion when it becomes available.

24 Q. Okay. Just to back up. On Rod

1 Gutridge when he was supposedly filling in for
2 Brad Boyer and then this formal promotion, are
3 there any documents that reflect that?

4 A. Payroll records would.

5 Q. Okay. Just -- the payroll records are
6 going to show the dates and the salary?

7 A. They would show that he was still an
8 hourly employee throughout 2005 and that he became
9 a salaried employee in 2006. And he would have
10 changed fringe benefit packages, including
11 retirement.

12 Q. Would you provide those payroll records
13 of Mr. Gutridge's to your counsel?

14 MR. KELLY: Well, Rob doesn't have the
15 payroll records.

16 MS. CUNNINGHAM: The company does. The
17 company does.

18 MR. KELLY: When you're done, you can
19 make some requests of me and we can deal with
20 that. But Rob doesn't have these records, so Rob
21 is not going to find them and produce them.
22 That's something that you can work with me on.

23 Q. Are there any other documents
24 reflecting his filling in and this promotion?

1 A. No.

2 Q. So would it be fair to say that when an
3 individual is promoted or filling in for a
4 foreman, there's no type of transfer document
5 created, it's not formalized in writing in any
6 way?

7 A. We have an employee action form
8 currently.

9 Q. Okay.

10 A. I can't say what the -- definitely that
11 one was filled out. But I'm not certain. That
12 would have been the operations manager, how he got
13 Rod changed over from hourly union to salary.

14 Q. But you don't know if that was being
15 used in 2005?

16 A. The information was conveyed to
17 payroll, it had to be. So how he did it, I don't
18 -- he could have written it on a note, he could
19 have done an employee action form, he could have
20 done some other method. I'm not certain.

21 Q. As I understand Ms. Gales' testimony on
22 these personnel files issue --

23 A. Uh-huh.

24 Q. -- there are no -- between 2003 and

1 2005, there were no personnel files kept of union
2 employees?

3 A. I would say that's -- that's an
4 accurate statement.

5 Q. Okay. And Mr. Gutridge was an union
6 employee --

7 A. He was.

8 Q. -- correct?

9 So when he was doing this fill-in, did
10 you go to the union and talk to them about this
11 agreement and having him fill in and perform
12 supervisory duties?

13 A. No. We have many in the other
14 divisions. There's no -- the union doesn't --
15 they accept the fact that many management
16 positions can be filled by their employees or
17 under the collective bargaining agreement.

18 Q. Okay. So they had no problem with
19 Mr. Gutridge performing supervisory duties but
20 still being paid the union wage?

21 A. That's correct. Because many
22 competitors, that's the way they hire their
23 foremen. Shelly & Sands is one competitor, our
24 other divisions up north, they're union foremen,

1 not salaried foremen.

2 Q. Okay. But you don't have union
3 foremen?

4 A. Not in Thornville.

5 Q. Okay. All right. Would it be fair to
6 say you did not contact the union to even discuss
7 this?

8 A. That's correct.

9 Q. Okay. Did you discuss it with
10 Mr. Gutridge, the fact that he was a union
11 employee and performing supervisory duties?

12 A. Oh, certainly.

13 Q. And he was agreeable?

14 A. Oh, yes.

15 Q. Okay. Are you familiar with the
16 foremen?

17 A. I know most.

18 Q. Do you know who they are?

19 A. Yes.

20 Q. Okay. Do you know when Scott
21 Cooperrider was promoted?

22 A. No, I don't.

23 Q. I mean --

24 A. Do you want ball park dates or --

1 MR. KELLY: She doesn't want you to
2 guess about anything.

3 THE WITNESS: Okay.

4 MR. KELLY: She's going to ask you what
5 your knowledge is.

6 THE WITNESS: Okay.

7 Q. Was it before you started?

8 A. No.

9 Q. Okay. Was it when Mr. Gibson was
10 working there?

11 A. What are those dates?

12 Q. 2000 -- well, we're only concerned here
13 with 2003 to 2005.

14 MR. KELLY: For -- he was -- we might
15 as well be clear. I think he was there, what, a
16 couple weeks in '03 and a couple weeks in '05. I
17 don't want to have the question refer to his --

18 MS. CUNNINGHAM: Well, the judge has
19 allowed us to inquire --

20 MR. KELLY: Oh, right. But your
21 question was when Mr. Gibson was employed there.
22 And he was employed there for a few weeks in '03
23 and a few weeks in '05. So if your question is
24 during '03 and '05, that's fine. But the question

1 you asked him was when Mr. Gibson was employed.

2 Q. Let me rephrase it.

3 It's my understanding Mr. Gibson worked
4 -- started in Shelly in 1998 and then he worked
5 until 2003 where there was this incident. Was
6 Mr. Cooperrider promoted during that time
7 period --

8 MR. KELLY: Hang on. I'm going to --

9 Q. -- 1998 to 2003.

10 MR. KELLY: And I'm going to object to
11 the form of the question to the extent it suggests
12 that Mr. Gibson was continuously employed from
13 1998 to 2003.

14 MS. CUNNINGHAM: We all know he was
15 seasonal.

16 MR. KELLY: I don't even know that he
17 was that. So to the extent you're --

18 MS. CUNNINGHAM: That's why I'm just
19 saying it's my understanding. Because as I recall
20 in your answer to the complaint, your client
21 stated it didn't really know the dates Mr. Gibson
22 was employed there.

23 MR. KELLY: I --

24 MS. CUNNINGHAM: I've got it here

1 somewhere.

2 MR. KELLY: I'm objecting to the form
3 of your question, that's all there is. You can --
4 to the extent you're making assumptions, that's
5 okay. But I don't want his answer to somehow
6 suggest or ratify that Mr. Gibson was continuously
7 employed, whether on a seasonal or other basis,
8 from 1998 to 2003 since that has not been
9 established as a fact.

10 MS. CUNNINGHAM: Well, he worked there
11 when he did.

12 Q. Was Mr. Cooperrider promoted during
13 that time period?

14 MR. KELLY: During what time period?

15 Q. 1998 the 2003?

16 A. But Ray wasn't employed for that whole
17 time.

18 Q. The question is: Was Mr. Cooperrider
19 promoted between 1998 and 2003?

20 A. I don't know.

21 Q. Okay. So you have no idea?

22 MR. KELLY: That would be assumed in "I
23 don't know."

24 Q. Okay. What about Richey Boring?

1 A. Again, you're talking many years and --

2 MR. KELLY: Your question is: Was

3 Richey Boring promoted between '98 and '03?

4 Q. Does he know when he was promoted?

5 A. I don't know. I don't know.

6 Q. Okay. And do you keep personnel files

7 on any of these individuals that would reflect

8 when they were promoted?

9 A. I don't. I don't know who would have
10 that information.

11 Q. As I understand it, you don't have
12 personnel files on union employees but you have
13 personnel files on management?

14 MR. KELLY: When you saw "you," are you
15 talking about Rob or the company?

16 MS. CUNNINGHAM: He represents the
17 company. He's the company rep. He's the head --

18 MR. KELLY: He's testifying here today
19 in his capacity as Rob Sharrett. He's not here as
20 some sort of 30(b) company rep. So just --

21 MS. CUNNINGHAM: But he was sitting
22 there --

23 MR. KELLY: Let me finish, please.

24 MS. CUNNINGHAM: -- during Ms. Gales'

1 deposition, he was sitting there as a company rep
2 but now he's not?

3 THE WITNESS: I --

4 MR. KELLY: Hang on. His testimony
5 here is as Rob Sharrett. That's how he was
6 noticed for this deposition. All I'm asking is,
7 when you ask a question where you say, do you keep
8 a personnel file, that you clarify, since he said
9 "I don't."

10 MS. CUNNINGHAM: Okay.

11 MR. KELLY: That was the point of it.

12 MS. CUNNINGHAM: Let me rephrase it.

13 MR. KELLY: Please.

14 Q. Does The Shelly Company keep a
15 personnel file of management individuals?

16 A. Again, not being smart, from the time
17 frame 2003 to 2005 or today?

18 Q. Any time.

19 A. Today they do. Then they didn't.

20 Q. Oh, okay.

21 A. I -- I believe that is true.

22 Q. Okay.

23 A. The -- to the best of my knowledge.

24 Q. Okay. So today there would be a

1 personnel file on managers, including foremen?

2 A. Maybe me. Yeah. I filled out some
3 forms and signed some -- that I saw the affidavit
4 -- the -- affirmative action program, that I know
5 the safety policies, that I know the drug policy,
6 so, yes. Were those policies in place during
7 Ray's time, probably not.

8 Q. Okay. So there may or may not be a
9 personnel file on Richey Boring?

10 A. Probably not.

11 Q. Okay.

12 A. During his time -- during Ray's time.
13 But, today, yes, there probably is.

14 Q. Did they start in 2008?

15 A. We hired a vice president of human
16 resources who has streamlined and --

17 Q. Okay. So now --

18 A. -- changed the process.

19 Q. So they've filled out all the forms and
20 got the files going. Okay.

21 A. Yes.

22 Q. I understand.

23 What about Brad Boyer, do you know when
24 he was promoted to a foreman?

1 A. I don't know when he was promoted, no.

2 Q. Okay. How about Jim Gilliam?

3 A. I've never heard of him.

4 Q. Don't know him?

5 Scott Carroll?

6 A. Never heard of him.

7 Q. Okay. Mark -- if I'm pronouncing this

8 right -- Sweringen, S-W-E-R-I-N-G-E-N.

9 A. Never heard of him.

10 Q. Never heard of him? Gary Schlea,

11 S-C-H-L-E-A.

12 A. Don't know him.

13 Q. Jeffrey Gant, G-A-N-T?

14 A. Don't know him.

15 Q. Mark Potts?

16 A. Yes. I know Mark Potts. I don't know

17 when he was promoted from crew member to foreman

18 or craft to foreman.

19 Q. Is he Caucasian?

20 A. He is, as far as I know.

21 Q. Rick Kessler?

22 A. He no longer works for the company.

23 Q. When did he leave?

24 A. 2005, I believe, the fall.

1 Q. What was his position?

2 A. Foreman.

3 Q. Foreman.

4 Why did he leave?

5 A. He left because he had inappropriate
6 behavior as a foreman or didn't fulfill the duties
7 of a foreman to the degree that I felt were
8 required.

9 Q. Okay. He's Caucasian?

10 A. Yes, he is.

11 Q. Who replaced Mr. Kessler?

12 A. Brad Boyer filled in for him for the
13 last -- he was dismissed in I want to say October.
14 The season ends in November. Maybe it was
15 September. But basically Brad came in for the
16 last two months -- Brad was to come into the
17 office. And because we had to let Rick Kessler
18 go, Brad went back out and took over that crew for
19 the last two months.

20 Q. Okay. Who was -- who's taking care of
21 that crew now? Who's the foreman of that crew --
22 wait. Strike that.

23 Who is the foreman for that crew in
24 2006?

1 A. That crew was disbanded, I believe.

2 Q. Did you promote or hire an individual
3 to fill that foreman's position?

4 A. No. I think that crew was dis --
5 basically dissolved or one less crew than the
6 number we had the prior year. I don't think that
7 crew was -- no, it wasn't as far as my knowledge.

8 Q. Okay. Were there any individuals hired
9 or promoted in 2006 as foreman?

10 A. I don't have that information in front
11 of me. I can't recall.

12 Q. Okay. What about Roger Strauss, do you
13 know Mr. Strauss?

14 A. I do.

15 Q. Is he Caucasian?

16 A. As far as I know. I don't ask and I
17 would -- it would appear so.

18 Q. Okay. Do you know when he was
19 promoted?

20 A. No. He's been with the company a very
21 long time.

22 Q. Was he a foreman when you came on board
23 in '94?

24 A. I don't know. He worked for the L.P.

1 Cavett Company in Cincinnati. And when that
2 division was sold off, parted out -- well, sold
3 off, he got incorporated into the Thornville
4 Division.

5 Q. Okay. So, again, there would be no
6 personnel file from Mr. Strauss until early '08?

7 A. True. Yeah, to the best of my
8 knowledge.

9 Q. So it would be fair to say if I wanted
10 to find out when any of these individuals were
11 promoted, I would have to depose those
12 individuals?

13 A. I'd say you'd have to maybe make a
14 request, let some people dig in. And the
15 operations manager might have more information
16 than I do. But the only way to be certain is
17 probably to ask them.

18 Q. Okay. Ms. Gales testified that you
19 provide -- you and other VPs provide information
20 that she passes on to the State and -- well, DAS
21 and ODOT regarding these contract compliance
22 reviews, correct?

23 A. Okay. Sure.

24 Q. Did you -- did you provide Ms. Gales

1 information to pass on to either DAS or ODOT, the
2 compliance reviews?

3 A. Can you be more specific?

4 Q. Do you provide them any information
5 regarding anything? I mean --

6 A. Yeah.

7 Q. -- does Ms. Gales come to you and say,
8 hey, we're having a compliance review next month
9 and I need you to get whatever it is that you get
10 together?

11 A. Yes.

12 Q. What do you provide to Ms. Gales?

13 A. She usually has specific questions like
14 numbers of promotions. That's the one that I
15 recall. Beyond that, I don't have any
16 recollection.

17 Q. If you could turn to Exhibit No. 1.

18 A. Okay.

19 Q. If you could turn to page 8 of that
20 form.

21 A. Recruitment. Is that the page?

22 Q. It says Training, page No. 8.

23 A. Oh, okay.

24 Q. Okay. Now, in the first section under

1 B where it says "Training," the last section
2 discusses whether there's an evaluation process
3 conducted annually. Do you see that sentence?

4 A. Right down here?

5 Q. Are you on the right form?

6 A. I'm on page 8. Is there an evaluation
7 process? Yes, I've read it.

8 Q. Did you provide -- now, this is marked
9 yes. Did you provide this information to
10 Ms. Gales?

11 A. If she requested it, I probably did. I
12 -- I don't know that.

13 Q. Okay. Well, this is marked "yes."

14 A. If I did, it would have been a
15 statement of fact or a written statement that says
16 that, yes, we did informal evaluation of all
17 employees.

18 Q. Okay. So is it a true statement that
19 there is an evaluation process conducted annually
20 of at least all minority and female personnel for
21 promotional opportunities to encourage those
22 employees to seek or prepare for such
23 opportunities?

24 A. There is an ongoing work performance

1 evaluation for all our employees.

2 Q. Is this --

3 A. Indirect.

4 Q. Indirect. Is this the evaluation
5 process that we've discussed before?

6 A. Right.

7 Q. Between the foreman, the supervisor and
8 the -- I forget the --

9 A. We communicate about the job
10 performance and whether they have potential.

11 Q. Okay. So is it fair to say there's no
12 formal evaluation process?

13 A. That's correct.

14 Q. Okay. Do you provide documentation to
15 Ms. Gales?

16 A. If -- via -- via e-mail maybe --

17 Q. Okay.

18 A. -- if she requests it. I mean, if she
19 requests it by e-mail, I'll probably respond in
20 e-mail form. If --

21 Q. I understand.

22 Under -- in the same exhibit right
23 below that it says, "Documentation provided." And
24 do you see where the X's are marked?

1 A. Uh-huh.

2 Q. Did you provide any of the documents
3 listed in each category that's marked to
4 Ms. Gales?

5 A. I'm not sure what that documentation
6 would have been. I assume for the second item it
7 would have been payroll records, which I wouldn't
8 have provided myself but probably the payroll
9 department would have. I would have provided a
10 list of employees promoted. I can recall I have
11 done that before.

12 Q. Okay.

13 A. Copies of CR1 reports submitted -- I
14 think -- I wouldn't have done that one. I think
15 Candace would have that information on the last
16 one. And the top one, copies of EEO officers job
17 descriptions, and that would be Candace's forms.

18 Q. Okay. If you could turn to page 11 of
19 this exhibit, now, this talks about personnel
20 operations.

21 A. Okay.

22 Q. And we've already talked about this
23 annual review. Do you see where that's marked
24 under "Required activity"? Would it be fair to

1 say the only annual review is this verbal
2 interaction?

3 A. That's correct.

4 Q. Okay. Now, the second one is marked
5 "yes." "Is there encouragement of minority and
6 female employees to seek promotional
7 opportunities?" Is there encouragement of
8 minority and female participants to seek
9 promotional opportunities?

10 A. To the -- I can't identify -- I can't
11 speak for the foremen who they're reporting to. I
12 can only offer up that I disseminate that same
13 information and I do encourage the supervisors and
14 the operations managers and the foremens in our
15 annual meetings or periodically that, you know,
16 look -- you know, we want to try and encourage
17 diversity in our company.

18 It's very difficult -- our -- the
19 county that our office is in is about 97 percent
20 white. Most of the people that work for us are in
21 that area, and it's very difficult to try to get
22 people that -- to commute a long distance from
23 where maybe better qualified or more qualified
24 foremen would be that are minority.

1 Q. Okay. So if I wanted to find out
2 whether there was actual encouragement and what
3 that encouragement was, I would have to depose
4 those foremen and superintendents and operation
5 managers?

6 A. I'd say yes, probably.

7 Q. Was there a written policy regarding
8 this encouragement?

9 A. I speak to again my management staff
10 periodically and certainly it's a topic of
11 discussion in the annual foremen's meeting, which
12 would be in the springtime before we call the
13 crews back and, you know, really promote as much
14 diversity as we can in our workforce.

15 Q. Okay. But it's all verbal, would that
16 be fair to say?

17 A. I'd say -- well, we have written
18 policies, and those policies are presented, and
19 people acknowledge reading them, that we do
20 promote nondiscriminatory behavior and we won't
21 tolerate it, and that we want to -- but I'm not
22 sure if I write a letter saying, you know --

23 Q. I'm not clear on which -- what steps
24 were taken to encourage promotions of minorities

1 and female.

2 A. It's a fine -- most of our workforce
3 are -- are very -- they do not have the desire, I
4 -- and I'm -- that's an inference on my part that
5 the foreman's positions are not highly desirable
6 for most of our craftspeople, okay? They're
7 fairly happy being -- they're craftsmen in their
8 own right. They take a great amount of pride in
9 operating equipment, providing -- building things
10 with their hands. And many just do not have a
11 desire, deep-rooted desire to take on the
12 responsibilities of traffic control, safety,
13 quality. It's a very -- it's a -- it's a very
14 tough job that, I mean -- and so to the extent
15 that they carry that forward and encourage people
16 to do it, I've done it before. It's not a -- you
17 know -- I would like to see more people desire to
18 do it.

19 Q. Okay. The third box is there -- is
20 marked "yes." And it states, "There are efforts
21 to assist minority and female employees to prepare
22 for promotion."

23 What steps does The Shelly Company take
24 to assist minority and female employees to prepare

1 for promotion?

2 A. Well, we offer tuition reimbursement
3 for all of our employees. We have a tuition
4 reimbursement program. It wouldn't just specify
5 -- we don't make it specific to minorities or
6 females. We make it available to all our
7 employees. That would be one.

8 Encouragement of union training, work
9 -- which would require like work zone traffic
10 supervisor.

11 Q. I'm sorry. What did you say?

12 A. It's a specialized certification, makes
13 the employee, well, more marketable in that
14 they've been properly trained on the requirements
15 of traffic control. We encourage all our
16 employees, again, to participant in the apprentice
17 -- or the training schedule throughout the winter
18 for the operators union, to learn new pieces of
19 equipment, to broaden their background.

20 But it's not identified -- we don't do
21 it just specifically for minorities. We do it for
22 all our employees.

23 Q. Okay. All right. Are you aware of EEO
24 charges that Mr. Gibson filed?

1 A. Yes.

2 Q. Okay. Did he file one in '05?

3 A. I'm not certain. He's filed at least,
4 I believe, three.

5 Q. Okay. All right. The date of this
6 report is March 9th of '05. If you will turn to
7 page 14.

8 A. Okay.

9 Q. Page 14 in the middle of the page
10 states, "Are there formal charges of
11 discrimination pending against the contractor?"
12 And it's marked "no."

13 Are you aware of whether or not there
14 was -- EEO charges were pending at the time this
15 was completed?

16 A. I don't know. No, I don't know.

17 Q. Who would -- would you have provided
18 that information to Ms. Gales? Or would that be
19 something that Ms. Gales would have been aware of?

20 A. Ms. Gales would have been notified
21 through the EEOC. Typically, that's where the
22 routing would go.

23 Q. Okay.

24 A. I know several -- well --

1 Q. I'm sorry. What were you saying?

2 MR. KELLY: You can wait for a
3 question.

4 THE WITNESS: Okay.

5 Q. Turn to Exhibit No. 2.

6 A. 2?

7 Q. Yes.

8 A. Okay.

9 Q. And if you will turn to the sixth page,
10 or seventh, under Section 4.

11 A. Okay. Okay.

12 Q. And you were here for Ms. Gales'
13 deposition, but this document is a DAS document.
14 It's a compliance review?

15 A. Okay.

16 Q. And question 25 asked: "Does the
17 contractor maintain copies of each employee's
18 performance and other employment evaluations in
19 their personnel files?" And it's marked "yes."
20 The date of this report is 2-20 of '03.

21 Isn't it true that that's not a correct
22 answer?

23 A. The way it's worded, yes.

24 Q. Who would have provided that

1 information to Ms. Gales?

2 A. I'm not certain.

3 Q. Turn to Exhibit No. 5. I'm sorry.

4 Exhibit No. 5.

5 A. Oh, I -- okay.

6 Q. Can you tell me which individuals

7 listed here are Caucasian and are foremen?

8 A. I can distinguish who's a foreman. I

9 can't -- again, I don't ask race, creed. You

10 know, any assumptions I would make would be based

11 on visual operation -- or visuals. So I don't

12 have -- I haven't asked these foremen as to what

13 -- we have not requested what their race or their

14 creed is, or I least I haven't. It's something

15 that I -- you know, is basically not taken into

16 account.

17 But I can identify who the foremen are.

18 Scott Cooperrider, Robby Lloyd, Shane Neverra,

19 Rick Kessler, Dave Scott, Mike Wiley, Tom Lambert

20 may or may not have been in '04. I'm not sure.

21 George Attis, Richey Boring, Dave Genteal, Wayne

22 Vickors or Delious Vickors, Mark Potts, Richard

23 Boring, Brad Boyer, Regan Sharrett, John Adams,

24 Ryan Packer, Erin Mullenkamp, Donald Mayle,

1 Kenneth Untied, Jeff Barnes, and I think that's
2 it.

3 Q. Okay.

4 A. Oh, let me check the last people. Yes,
5 that's it.

6 Q. Okay. Are there individuals listed on
7 here you know that are minority?

8 A. I know that Donald Mayle is, Jeff
9 Barnes. That's it.

10 Q. Turn to Exhibit No. 11. This is the
11 city contract compliance review form in 2003 that
12 I discussed with Ms. Gales.

13 A. Okay.

14 Q. In the center of the page where it
15 talks about how many non -- how many minority
16 employees were hired and how many were promoted,
17 did you provide this information to Ms. Gales?

18 A. Not to my recollection.

19 Q. Okay. Are you familiar with any of
20 these stats?

21 A. I don't think I was the general manager
22 at this time.

23 Q. Okay. I'm sorry. When did you become
24 general manager?

1 A. 2004 maybe.

2 MS. CUNNINGHAM: Let's take a break.

3 (A short recess is taken.)

4 Q. Okay. When you've testified about the
5 foreman and the superintendent and the -- and I
6 apologize, I keep forgetting the title, the other
7 people that --

8 A. Superintendent.

9 Q. -- help --

10 A. Superintendents and operations
11 managers.

12 Q. Operations managers. They evaluate and
13 look at the crews, and they all talk and that sort
14 of thing. Would it be fair to say that crew
15 members stay on a given crew the entire season?

16 A. It's really specific to the work type.

17 Q. What do you mean?

18 A. If it's an asphalt paving crew, then
19 generally yes, they are very tight-knit. If it's
20 a construction crew, then it's a more broad -- the
21 needs with the resources become a lot more
22 dynamic, versatile. So you might need three hoe
23 operators, excavator operators today. Tomorrow
24 you've done that excavation activity, maybe you

1 need one, so that employee gets transferred to
2 another construction crew that has a different
3 need.

4 But pretty much the foremen for the
5 asphalt paving crews have the same need for
6 resources, people, on a day-in-day-out basis.

7 Q. Would it be fair to say that some
8 employees do not stay with the same crew all
9 season?

10 A. Yes.

11 Q. And it's fair to say that some
12 employees move from crew to crew throughout the
13 season?

14 A. Again, depending on -- the likelihood
15 of moving is really dependant on the type of work.

16 Q. Okay. So how do employees that are
17 moved from crew to crew or even several crews
18 throughout the season, how are they being
19 evaluated by these foreman and superintendents?

20 A. Job site visits. The superintendents
21 meet with the construction -- or with the foremen,
22 oh, I don't know if it's weekly. It depends on
23 where they are. But they're visited, there's
24 discussion, hey, how is it going, you know, what's

1 -- oh, you've got so-and-so working for you. How
2 is that going? You know, that would be the
3 process, there's constant dialogue.

4 Q. Right.

5 A. And it's not documented, but it's
6 there.

7 Q. Wouldn't it be fair to say that someone
8 who moves from crew to crew would not have an
9 opportunity to build up that same bond and that
10 team effort as someone who was on the same crew
11 throughout the season?

12 A. Our -- one individual who I think is
13 identified here, Ed Wilson, under Exhibit 19, is
14 responsible for contacting employees, discharges.
15 He basically takes the craftspeople on a daily
16 basis and evaluates the needs and the resources
17 and allocates them to the foremen. If the foremen
18 need additional resources or have an abundance of
19 people, they would call Ed and say, Ed, this is
20 what I need or this is what I've got, you know, in
21 the way of personnel. And he would weigh that
22 with what other dynamics are going on, who else
23 has needs or excesses.

24 And then by that same token, those

1 conversations are daily. In that same
2 conversation, oh, you had so-and-so, how did that
3 go? You know, is it -- you know, good guy, bad
4 guy, good woman, bad -- you know, performance and
5 so those are constant. I mean, it's a very
6 interactive communication.

7 Q. I understand that.

8 But that wasn't the question. Could
9 you read back the question, please.

10 (The record is read as requested.)

11 A. I'd say no to that question.

12 Q. Why?

13 A. Because some people, the longer they
14 stay with the crew, the more they don't build a
15 team bond. They may degenerate one. Just because
16 we spend time together doesn't necessarily
17 indicate that we're going to get along great, does
18 it?

19 Q. So it's your testimony that if someone
20 was bounced around, they may have a better
21 opportunity to build a better rapport?

22 A. I'd say that -- that happens, yes,
23 probably as likely as it happens the other way.

24 Q. Okay. Mr. Gibson was a roller

1 operator?

2 A. Uh-huh.

3 Q. With this type of job, would he be
4 bounced around or would he stay with the same crew
5 all season?

6 A. It generally works on tenure. I mean,
7 if he had been with -- but roller needs change.
8 There's usually a third roller position on
9 different types of work. The standard crew is two
10 roller operators, and we supplement depending on
11 the size of the job.

12 And so that person, again, calling in
13 to Ed saying, these are -- you know, I either have
14 a need or I can help someone else fulfill a need.
15 That's when that would deem itself.

16 Q. So it would be fair to say that
17 Mr. Gibson would be moved around more often than
18 other employees?

19 A. No, I wouldn't say that's fair to say.

20 Q. Do you know whether or not Mr. Gibson
21 was moved around a lot?

22 A. I do not. We have a lot of employees
23 that get moved around and some -- at some point in
24 time pretty much everybody has been moved around

1 or displaced or not been with their -- maybe the
2 crew that they're with a lot of the time. But,
3 again, the work type and when it happens and the
4 workload dictates and changes all the time.

5 Q. Okay. Do you know Richey Boring, Sr.?

6 A. Yes.

7 Q. Okay. Did he retire?

8 A. He did.

9 Q. When did he retire?

10 A. No. I'm sorry. Richey -- no, he is
11 not retired.

12 Q. Okay. Did he leave?

13 A. No.

14 Q. Did he move, change his teams or --

15 A. No. He's -- you made a good point that
16 he -- the reason I was confused is he has said
17 that this will be his last season. But, no, he
18 hasn't retired as of yet.

19 Q. What's his position?

20 A. Foreman.

21 Q. How long has he been a foreman?

22 A. I can't give you a specific date. But
23 a mid '90s, late '90s. I don't know.

24 Q. Okay. Was there some point where he

1 was going to retire and then didn't?

2 A. Oh, I think he made some desire -- or
3 he may have thought that he wanted to retire and
4 then changed his mind.

5 Q. Do you recall an instance, though,
6 where he had put in his notice he was going to
7 retire?

8 A. Oh, absolutely not. He did not notify
9 us that he had a definite desire to retire.

10 Q. Do you know Brad Turner?

11 A. No.

12 Q. In your opinion, is Mr. Gibson
13 qualified to perform a foreman job?

14 A. No.

15 Q. Why?

16 A. His safety record would indicate that
17 he has poor habits when it comes to protecting
18 himself and others.

19 Q. Okay. When?

20 A. Also, his alleged and investigated
21 behavior, which the company found to be factual,
22 that he engaged in sexual harassment or hostile
23 work environment would also indicate that he's
24 inappropriate for a foreman's position.

1 Q. When your company conducts
2 investigations such as the nature you've talked
3 about, Ms. Gales says sexual harassment
4 investigations, do they question the alleged
5 perpetrator?

6 A. They may; they may not.

7 Q. It just depends?

8 A. Sure.

9 Q. Why wouldn't they?

10 A. If he wasn't available, that would be
11 one reason.

12 Q. You wouldn't call him on the phone?

13 A. If it was so obvious that his behavior
14 had occurred or the incident that had occurred, it
15 wouldn't necessarily be required that you ask a
16 person if they engaged in a behavior that was
17 cause for termination.

18 Q. Isn't it true that the arbitrator found
19 there wasn't sufficient evidence of sexual
20 harassment in the 2003 termination?

21 MR. KELLY: I'm going to object.

22 THE WITNESS: Okay.

23 MR. KELLY: I -- what does that have to
24 do with this case at all? Because we're not

1 relitigating the case. It's already
2 been dismissed.

3 MS. CUNNINGHAM: No, we're not, but he
4 was discussing that --

5 MR. KELLY: Okay. But --

6 MS. CUNNINGHAM: Let me finish. Let me
7 finish.

8 MR. KELLY: -- we're not rehashing
9 issues for a case that has already been dismissed.
10 That's not the purpose of this deposition.

11 MS. CUNNINGHAM: He just testified that
12 he didn't feel that Mr. Gibson was qualified
13 because of these alleged complaints of sexual
14 harassment. So, therefore, my question was:
15 Isn't it true the arbitrator found there wasn't
16 sufficient facts to support that?

17 MR. KELLY: I'll object to the form of
18 your question --

19 MS. CUNNINGHAM: You can object.

20 MR. KELLY: -- since you're
21 misrepresenting the arbitrator's findings. That's
22 not the specific finding of the arbitrator at all.

23 MS. CUNNINGHAM: That's my
24 recollection.

1 MR. KELLY: I understand. That may
2 even be your interpretation, but it's not an
3 accurate portrayal, so I will object to the extent
4 that's the way you're going to portray the
5 arbitrator's findings.

6 MS. CUNNINGHAM: That's fine.

7 Q. You can answer the question.

8 A. I think the company investigated it and
9 regardless of what the arbitrator's decision was,
10 that -- that the company had grounds to dismiss,
11 and that's my interpretation, Rob Sharrett's.

12 Q. Okay. But it's true that Mr. -- that
13 the arbitrator ordered that Mr. Gibson be
14 reinstated with back pay?

15 A. That is true.

16 Q. Okay. These foremen and the
17 superintendents and the operations managers --

18 A. Uh-huh.

19 Q. -- are they all Caucasian?

20 A. Not all. Trevor Small would be a
21 Native American, as far as I know. But the others
22 would appear to be Caucasian.

23 Q. Okay. So all of them except Trevor
24 Small?

1 A. There's only five or six, so, yeah, if
2 that's the number.

3 Q. Okay. Let's name the people, the five
4 or six.

5 A. Ed Wilson.

6 Q. He's Caucasian?

7 A. As far as I know.

8 Q. Okay.

9 MR. KELLY: What time period?

10 THE WITNESS: What time frame?

11 MS. CUNNINGHAM: Let's go from 2003 to
12 2005.

13 MR. KELLY: Are we going to go through
14 the minority foremen that he already identified
15 for you for that period?

16 MS. CUNNINGHAM: He identified as there
17 being five or six of them, and I would like to
18 know their names and their races.

19 MR. KELLY: Okay. And -- but we've
20 already been through the 2003 to 2005 ones where
21 he identified the three minority ones before. Are
22 we going through all of that again?

23 MS. CUNNINGHAM: The question was not
24 just foremen. It was foremen, superintendents,

1 and operations managers.

2 THE WITNESS: Repeat the question,
3 please.

4 MS. CUNNINGHAM: Could you read that
5 back.

6 (The record is read as follows: "These
7 foremen and the superintendents and the operations
8 managers, are they all Caucasian?")

9 MR. KELLY: But you're not asking in
10 the present tense in the question. Now you want
11 to know about '03 to '05; is that right?

12 MS. CUNNINGHAM: Oh, I don't care about
13 '08.

14 MR. KELLY: I'm just trying to
15 understand. Your question says are they all --
16 Q. We -- we talked -- we talked about the
17 time frame, and I said 2003 to 2005.

18 A. Okay. The question you said mentioned
19 foremen. We've already covered that.

20 Q. Okay.

21 A. Are you just interested in the
22 superintendents/operations manager?

23 Q. You testified that there were five to
24 six of them when I asked you, are the foremen,

1 superintendents and operations managers Caucasian?

2 You said, oh, there's only five to six of them.

3 A. My reference was to the

4 superintendents.

5 Q. Oh, okay, just that's where the

6 confusion --

7 A. That's where the five or six came from.

8 Q. Okay.

9 A. I thought we had a breakdown in
10 communication.

11 Q. The superintendents -- we've discussed
12 the foremen. And the superintendents, there was
13 only one?

14 A. Operations manager -- oh, you're right.
15 Correct. Yes. One. Trevor Small.

16 Q. Trevor Small?

17 A. Uh-huh.

18 Q. Who is a superintendent?

19 A. Yes.

20 Q. Who is a minority?

21 A. Yes.

22 Q. And he's American Indian?

23 A. Correct.

24 Q. And there is only one operations

1 manager who's Tim Anderson?

2 A. Correct.

3 Q. And he's Caucasian?

4 A. As far as I know.

5 Q. So it would be fair to say -- oh, Jeez.

6 During 2003 to 2005, do you know who the foremen

7 and the superintendents were of crews that

8 Mr. Gibson worked on?

9 A. No.

10 Q. Okay. Would there be any documentation

11 that --

12 A. I think the transcripts for the court

13 case would indicate who he worked for.

14 Q. Oh, okay. Okay.

15 MS. CUNNINGHAM: Let's take another

16 break.

17 (A short recess is taken.)

18 Q. I have no further questions.

19 A. Okay. Thank you.

20 MR. KELLY: He'll read.

21 - - - - -

22 Thereupon, the foregoing proceedings

23 concluded at 1:43 p.m.

24 - - - - -

1 State of Ohio : C E R T I F I C A T E

2 County of Franklin: SS

3 I, Stacy M. Upp, a Notary Public in and for the
4 State of Ohio, certify that Robin Sharrett was by
5 me duly sworn to testify to the whole truth in the
6 cause aforesaid; testimony then given was reduced
7 to stenotype in the presence of said witness,
8 afterwards transcribed by me; the foregoing is a
9 true record of the testimony so given; and this
10 deposition was taken at the time and place
11 specified on the title page.

12 Pursuant to Rule 30(e) of the Fed. R. Civ. P.,
13 the witness and/or the parties have not waived
14 review of the deposition transcript.

15 I certify I am not a relative, employee,
16 attorney or counsel of any of the parties hereto,
17 and further I am not a relative or employee of any
18 attorney or counsel employed by the parties hereto,
19 or financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Columbus, Ohio, on
22 _____, 2008.

23 _____

24 Stacy M. Upp, Notary Public - State of Ohio

Witness Errata and Signature Sheet

Spectrum Reporting LLC		Correction or Change Reason	
Code			
	333 East Stewart Avenue	1 - Misspelling	2 - Word
Omitted			
	Columbus, Ohio 43206	3 - Wrong Word	4 -
Clarification			
	Phone - 614-444-1000 Fax - 614-444-3340	5 - Other Correction (Please	
explain)			
	Email - admin@spectrumreporting.com	R	Sheet ____ of

[illegible]

I, Robin Sharrett, have read the entire transcript of my deposition taken in this matter,

or the same has been read to me. I request that the changes noted on my errata sheet(s) be

entered into the record for the reasons indicated.

Date _____ Signature _____

The witness has failed to sign his deposition within the time allowed.

Date _____ Signature _____

[illegible]

The witness has failed to sign his deposition within the time allowed.
Date _____ Signature _____

1 State of Ohio : C E R T I F I C A T E

2 County of Franklin: SS

3 I, Stacy M. Upp, a Notary Public in and for the
4 State of Ohio, certify that Robin Sharrett was by
5 me duly sworn to testify to the whole truth in the
6 cause aforesaid; testimony then given was reduced
7 to stenotype in the presence of said witness,
8 afterwards transcribed by me; the foregoing is a
9 true record of the testimony so given; and this
10 deposition was taken at the time and place
11 specified on the title page.

12 Pursuant to Rule 30(e) of the Fed. R. Civ. P.,
13 the witness and/or the parties have not waived
14 review of the deposition transcript.

15 I certify I am not a relative, employee,
16 attorney or counsel of any of the parties hereto,
17 and further I am not a relative or employee of any
18 attorney or counsel employed by the parties hereto,
19 or financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Columbus, Ohio, on
22 May 28, 2008.

23 Stacy M. Upp-----
24 Stacy M. Upp, RPR, Notary Public - State of Ohio
My commission expires August 6, 2011.